



Environmental Protection Act 1986

Hon Stephen Dawson MLC
Minister for Environment

MINISTER'S APPEAL DETERMINATION

APPEAL AGAINST DECISION OF THE ENVIRONMENTAL PROTECTION AUTHORITY NOT TO ASSESS A PROPOSAL

KIMBERLEY MARINE OFFLOADING FACILITY, PORT OF BROOME

Purpose of this document

This document sets out the Minister's decision on an appeal lodged under section 100(1)(a) of the *Environmental Protection Act 1986* in objection to the EPA decision not to assess the Kimberley Marine Offloading Facility. This document is produced by the Office of the Appeals Convenor for the Minister but is not the Appeals Convenor's own report, which can be downloaded from the Appeals Convenor's website at www.appealsconvenor.wa.gov.au.

Appellant:	Environs Kimberley
Proponent:	Kimberley Marine Support Base Pty Ltd
Proposal description:	Construction and operation of the Kimberley Marine Offloading Facility at the Port of Broome, in the Shire of Broome
Minister's Decision:	The Minister dismissed the appeal
Date of Decision:	19 November 2020

REASONS FOR MINISTER'S DECISION

Pursuant to section 106 of the *Environmental Protection Act 1986* (the Act), the Minister obtained a report from the Environmental Protection Authority (EPA) on the matters raised in the appeal. The Minister also received a report from the Appeals Convenor. The Appeals Convenor's report sets out the background and other matters relevant to the appeal.

The appeal was lodged in objection to the decision of the EPA not to assess a proposal by Kimberley Marine Support Base Pty Ltd (proponent) to develop the Kimberley Marine Offloading Facility at the Port of Broome (the proposal), in the Shire of Broome.

The proposal the subject of the appeal is the construction and operation of a deep-water floating wharf, along with associated onshore hardstand and terminal facilities suitable for container and general cargo stevedoring for coastal trading vessels, berthing and mooring for cruise vessels, and roll on/roll off ships.

After considering the information provided, including multiple public submissions, the EPA determined that the environmental impacts of the proposal were not so significant as to warrant formal impact assessment. Central to the EPA's decision was the scale, extent, severity, and duration of potential impacts of the proposal, and the mitigation and management measures committed to by the proponent.

The appeal raised several concerns with the EPA's decision, including the significance of the marine fauna inhabiting the area, the potential cumulative impacts, and the opportunity for public input into management plans. The Minister noted that the appellant sought for the proposal to be remitted to the EPA for a Public Environmental Review.

Having carefully considered the information available, including the appeal, a report from the EPA in response to the appeal which was considered by the Appeals Convenor, and the Appeals Convenor's report and recommendation, the Minister was of the view that the decision of the EPA not to assess the proposal was justified. The reasons for his decision are set out below.

Marine fauna

The appellant raised concerns about the presence of conservation significant marine fauna in Roebuck Bay and the potential noise impacts resulting from construction of the proposal, and boat strikes from vessel movement. It submitted that the Australian Snubfin dolphins that inhabit the area are likely to be impacted, and there is insufficient information to adequately understand the effect of the proposal.

The EPA noted the significant environmental values of the Bay, and the body of research related to marine fauna in the area. The proponent provided the EPA with several reports including an Underwater Noise Assessment commissioned in recognition of the potential noise impacts resulting from underwater piling. The Minister understood the noise assessment made several recommendations to mitigate noise impacts that the proponent has adopted, along with other commitments to minimise the impacts to marine fauna.

Regarding boat strikes, the Minister noted the EPA's advice that the likelihood of strike is low due to the high mobility of dolphins, and because the proposal area is not considered important foraging habitat. The Minister also understood that the Kimberley Port Authority (KPA) will enforce maximum vessel speed limits.

Having regard for the above, the Minister was of the view that the EPA had sufficient and adequate information to understand the presence of marine fauna and potential impacts resulting from the proposal. Noting the measures adopted by the proponent to mitigate potential impacts of the proposal on the Snubfin dolphin, and the maximum speeds as stipulated by the KPA, the Minister agreed with the EPA's conclusion that potential impacts on marine fauna from the proposal are not so significant as to warrant formal assessment.

Cumulative impacts

The appellant raised concerns that cumulative impacts resulting from the proposal have not been assessed, noting that there are two other developments in the vicinity.

The Minister understood that preliminary technical investigations did consider the proposal in conjunction with a Department of Transport boating facility and that siting of both facilities was amended to protect environmental and cultural values.

The Minister noted that likely environmental impacts of this proposal are small in extent and localised in nature, there is no dredging and spoil disposal required, the proposal has been designed to minimise restrictions to water flow and prevent sediment trapping. The Minister

also understood that the EPA has advised that it can consider the combined effects of multiple developments should other proposals in the vicinity be referred.

Public input into management plans

The Minister understood that the appellant raised concerns that there is no opportunity for public input into the effectiveness of management plans, specifically the KPA's *Oil Spill Contingency Plan or Tactical Response Plan* and the proponent's *Construction Environmental Management Plan*.

The Minister noted that Roebuck Bay represents significant environmental and cultural value to the Broome community and that there is community interest in the development of the area. The Minister understood that the proponent and KPA have committed to ongoing consultation with the local community, and this will include matters such as management plans. The Minister therefore considered that there is no need for a Public Environmental Review to allow further public consultation.

Note: this decision is published pursuant to the terms of section 110 of the *Environmental Protection Act 1986* and regulation 8 of the *Environmental Protection Regulations 1987*.

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